

**ROXANE'S MOTION FOR LEAVE TO FILE EXHIBITS AND OTHER MATERIAL
CONTAINING CONFIDENTIAL PRICING INFORMATION UNDER SEAL**

Roxane respectfully moves for leave to file under seal, and an order requiring the Government to file under seal, certain exhibits and other material containing confidential pricing information from 2004 through 2006, which the Government intends to include in its summary judgment filings. The Protective Order entered in this case in September 2007 provides that “confidential” information includes “current information that any producing party, including any third party, in good faith, believes to contain (a) current proprietary or commercially sensitive information.” (Ex. A, 9/21/07 Protective Order ¶ 3) “Highly confidential” information includes “other confidential information . . . the disclosure of which is likely to cause competitive or commercial injury to the producing party.” (*Id.* ¶ 3) The Protective Order contemplates that “confidential” and “highly confidential” information should be filed with the Court under seal. (*Id.* ¶ 4(h)) This Court has previously allowed pricing information that is less than five years old (*i.e.*, pricing information from 2004 onward) to be filed under seal in a companion case in this MDL. (Ex. B, 5/20/09 Elec. Order re Dkt. No. 6048) Roxane requests similar relief here.

In response to the Government's Request for Documents in this case, Roxane produced a number of CDs containing Roxane's transactional data up through 2007. This data included pinpoint pricing, by drug, class of trade and customer, of the Roxane Subject Drugs. Should this pricing information be disclosed to its competitors, it would cause "competitive or commercial injury" to Roxane, and thus is properly designated "highly confidential" under the Protective Order. Just two days before the filing of its summary judgment motion, the Government informed Roxane that it intends to file several exhibits that reveal average contract prices for some of the Subject Drugs up through 2006.¹ These analyses are presumably derived from Roxane's production of highly confidential transactional data in this case. At a minimum, under the Protective Order and this Court's prior ruling, the contract prices from 2004 through 2006 are confidential or highly confidential information, and such information (and any discussions in the briefing that disclose such information) should be filed under seal.² Accordingly, Roxane respectfully requests that this information be filed under seal and that the Court enter an order requiring the Government to file this information under seal and serve only redacted portions in any public filing.

¹ The Government disputes that this information is confidential. Consistent with Local Rule 7.1, Roxane counsel conferred with Government counsel and suggested omitting the data from 2004 through 2006 from any public filing. The Government did not agree and the parties have been unable to resolve their dispute.

² Although Roxane respectfully contends that all pricing data, including that prior to 2004, is confidential and subject to protection under the Protective Order, Roxane acknowledges that this Court has previously suggested that pricing information that is older than five years is presumptively "not confidential." (Ex. B, 5/20/09 Elec. Order re Dkt. No. 6048)

Dated: July 23, 2009

Respectfully submitted,

/s/ Eric T. Gortner
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On behalf of Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2009, I caused a true and correct copy of the foregoing Roxane's Motion For Leave To File Under Seal to be served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

By: /s/ Eric T. Gortner
Eric T. Gortner